



Coalition of Wisconsin Aging Groups
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**Testimony in Support of AB 279
By Attorney Ellen Henningsen
May 1, 2007
Assembly Committee on Aging and Long-Term Care**

The Coalition of Wisconsin Aging Groups urges your approval of 2007 AB 279, which reconciles conflicts in the new laws governing guardianship, protective services and reporting abuse that were passed last session by the legislature – 2005 Act 387, Act 264, and Act 388, respectively.

The three laws that AB 279 reconciles are significant improvements in the law protecting vulnerable adults in Wisconsin. Given the size, complexity and overlapping subjects of the bills, and their different origins and routes through the legislature, it is inevitable that there would be some areas that now need attention via a reconciliation bill.

AB 279 includes technical revisions that correct statutory cites, cross-references, definitions and terminology. AB 279 also address areas where two or three of the bills addressed the same issue, but did so differently. AB 279 reconciles these areas by either selecting the treatment passed in one of the acts or, in a few cases, by selecting but modifying for clarity one of the treatments previously passed.

Here's an example of the conflicts that need reconciling. The old guardianship statute included a provision that a hearing to appoint a guardian for the purpose of consenting to psychotropic medications is open to the public, unless a motion is made to close it. Act 264 repealed this provision because it was no longer needed due to the new psychotropic medication provisions elsewhere in Act 264. But Act 387 kept the provision, renumbering it to Ch. 54 and amending it by applying it to all guardianship hearings and by stating that a hearing is closed to the public unless a motion is made to open it. The Revisor did not give effect to Act 387's treatment because Act 264 had passed and become effective before Act 387. Thus, new Ch. 54 has no provision about whether a guardianship hearing is open or closed. AB 279 appropriately adopts Act 387's language.

If not passed, portions of the statutes will continue to be confusing or incomplete - identical subsection numbers used for different provisions, some definitions not identical, some sections with provisions that aren't identical, etc. Passage of AB 279 ensures that our focus will be on successfully implementing these important improvements in the law affecting vulnerable adults, not on figuring out how to deal with the confusion over unreconciled provisions.

CWAG urges your support for AB 279. Thank you for your consideration.

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Assembly Committee on Aging and Long Term Care Testimony In Support of AB 279 (SB 153) May 1, 2007

Betsy Abramson, Advisor, State Bar of Wisconsin Elder Law Section

Assembly Bill 279 (companion bill Senate Bill 153) is necessary to reconcile conflicting provisions of three very important and comprehensive acts passed by the Legislature last year. The first two acts, which arose out of the Legislative Council's Study Committee on the Recodification of Ch. 55, are 2005 Wisconsin Act 264, which recodified Chapter 55 of the statutes and 2005 Wisconsin Act 388, which modernized the elder abuse reporting system in chapter 46 of the statutes and then created parallel provisions for protection of vulnerable adults under the age of 60. The third act, developed by our Elder Law Section, is 2005 Wisconsin Act 387, which overhauled the entire guardianship law in chapter 880 of the statutes and placed it in a newly created chapter 54 of the statutes. To add to the confusion, the first bill became effective November 1, 2006, but the other two did not become effective until December 1, 2006 and in some cases undid the changes that had become effective a month earlier.

Not surprisingly with legislation this comprehensive and large, and different effective dates, the Revisor of Statutes found inconsistencies, conflicts and other small "glitches." This reconciliation bill therefore makes these small corrections in areas of the statutes where conflicting provisions are printed adjacent to each other, words are missing or repeated and other small errors. The bill will clarify the applicable law for practitioners, county staff and courts working in the areas of guardianship and adult protective services. Additionally, to reconcile existing conflicts between these three acts, the bill updates cross-references, makes technical terminology changes and deletes redundant provisions.

Thus, every provision of this bill simply selects which provision of the three passed acts should take effect. There are no substantive changes to the law in this reconciliation bill. The three initial bills were a long time in planning and comprehensive in scope. We urge swift adoption of this "clean-up" bill to aid in their implementation.


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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE JOHN TOWNSEND
FROM:  Laura Rose, Deputy Director
RE: 2007 Assembly Bill 279
DATE: April 27, 2007

This memorandum describes the provisions of 2007 Assembly Bill 279, a bill which reconciles conflicts between 2005 Wisconsin Acts 264, 387, and 388. These three Acts did the following:

- Act 264 recodified and revised ch. 55, relating to protective placements and services for adults with disabilities.
- Act 357 revised ch. 880, relating to guardianship, and moved it to newly created ch. 54.
- Act 388 revised the elder abuse reporting and investigation system in ch. 46, and created parallel provisions in ch. 55 to provide protections from abuse for non-elderly adults who have disabilities.

This bill is an updated version of 2005 Senate Bill 731. The provisions of the bill fall into 13 separate categories. This memorandum lists each category, and under each category lists the SECTIONS of the bill that fall into that category. In a few cases, provisions fall into more than one category. The categories are as follows:

A. PROVISIONS THAT WERE IN 2005 SENATE BILL 731

The following provisions were in 2005 Senate Bill 731, the reconciliation bill introduced in the 2005-06 Legislative Session:

SECTIONS 5, 6, 7, 9, 10, 11, 17, 18, 19, 21, 27, 29, 43, 44, 45, 52, 61, 65, 72, 73, 77, 78, 79, 86, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 117, 120, 122, 125, 127, 129, 130, 131, 132, 133, 135, 136, 137, 140, 141, 142, 143, 144, 145, 146, 151, 155, 157, 159, 160, 161, 162, 163, 166, 167, 169, and 170.

B. STATUTORY SECTIONS MERGED BY REVISOR WITH NO CONFLICT, BUT INCLUDED IN THE BILL TO RATIFY REVISOR DECISIONS

SECTION 83 of the bill is an example of a case where the Revisor merged two treatments of the same statutory section. This SECTION repeals and recreates s. 55.055 (1) (a), Stats. The repeal and recreate of this section is identical to the language in current law but is included in the bill in order to reinforce the Revisor's treatment of the merger of the provisions in Acts 264 and 387.

Other sections in the bill that fall into this category are SECTIONS 84, 85, 92, 99, 106, 109, 110, 111, 128, 135, 137, 141, and 147.

C. SECTIONS THAT CORRECT INCORRECT CROSS-REFERENCES

The bill corrects numerous incorrect cross-references in the statutes that were affected by Acts 264, 387, and 388. SECTIONS of this draft that correct cross-references are: 8, 15, 22, 28, 37, 40, 50, 67, 76, 79, 86, 90, 96, 97, 115, 117, 121, 122, 124, 125, 126, 130, 136, 143, 153, 156, 157, 158, 161, 169, and 170.

D. TECHNICAL CHANGES TO FIX TERMS, GRAMMAR ERRORS, AND ERRONEOUS LANGUAGE

Many of the provisions in the bill make technical corrections to the statutes. An example of this is in SECTION 31 of the bill, where the word "wards" has a comma instead of an apostrophe. Other SECTIONS of the bill that have similar corrections include: 13, 32, 33, 34, 53, 54, 55, 56, 57, 59, 63, 65, 69, 71, 75, 87, 88, 91, 93, 94, 100, 103, 104, 119, 124, 154, 165, and 168.

Other SECTIONS of the bill correct erroneous language. For example, SECTION 70 changes a reference to a minor "who is alleged to be developmentally disabled" to a minor "who is alleged to have a developmental disability." Other SECTIONS that correct erroneous language are SECTIONS 62, 66, 75, 95, 100, 133, and 150.

E. POSSIBLE REVISOR ERRORS

Possible Revisor errors in the printing of the statutes were noted and fixed in SECTIONS 38 and 80.

F. PROVISIONS THAT ARE REDUNDANT TO ANOTHER PROVISION IN THE STATUTES

SECTIONS 16, 41, 46, 17, and 49 delete statutory provisions that are redundant to other provisions in the statutes.

G. GUARDIAN AS A PROVIDER OF PROTECTIVE SERVICES

SECTION 74 of the bill repeals and recreates s. 55.03 (1), Stats., to provide as follows:

55.03 (1) AGENCY AS BOTH GUARDIAN AND PROVIDER PROHIBITED. No agency acting as a guardian appointed under ch. 880, 2003 stats., or ch. 54

may be a provider of protective services or protective placement for its ward under this chapter.

This represents a merger of the provisions in Acts 264 and 387.

H. CHANGES TO PROVISIONS RELATING TO PSYCHOTROPIC MEDICATION

The Legislative Council Special Committee on the Recodification of Chapter 55 created the legislation that became 2005 Wisconsin Act 264. A component of this legislation contained substantial revisions to the procedures which outlined a guardian's ability to give consent to the administration of medications to a ward. However, when 2005 Wisconsin Act 387 was enacted later in the session, many of these provisions were deleted from the law or, when merged with Act 264, resulted in the procedures no longer being understandable. This bill clarifies the treatment of these procedures. These provisions are in SECTIONS 39 and 42 of the bill.

I. CONFLICTS BETWEEN 2005 WISCONSIN ACTS 264 AND 387; WHERE ACT 264 PREVAILS

When the Revisor printed the 2005-06 Statutes and attempted to merge the three Acts, the last enacted Act's provisions superseded prior provisions. An example of this is in s. 55.14, Stats., that relates to the procedure for involuntary administration of psychotropic medications. The Legislative Council special committee spent an extensive period of time revising these statutes and creating a procedure that meets due process requirements. However, because Act 387 was enacted later than Act 264, many of these new provisions were removed from the statutes.

Other provisions of this bill which restore the Act 264 provisions are SECTIONS 86, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 118, 127, 129, 130, 131, 132, 136, 140, 142, 143, and 146.

J. CONFLICTS BETWEEN 2005 WISCONSIN ACTS 264 AND 387; WHERE ACT 387 PREVAILS

In some cases, current law contains conflicting provisions that were created between Acts 264 and 387. SECTION 14 of the bill is an example where the Act 387 provisions take precedence over Act 264's provisions. This SECTION defines "voluntary" for the purposes of determining a person's presence in a county for the purposes of financial responsibility. Other provisions in the bill where Act 387 takes precedence are SECTIONS 20, 35, 36, 43, 44, 45, 60, 61, 68, 72, 134, 144, and 145.

K. CONFLICTS BETWEEN 2005 WISCONSIN ACTS 264 AND 388; WHERE ACT 388 PREVAILS

SECTIONS 159, 160, 162, 164, and 166 in the bill reconcile conflicts between Acts 264 and 388 by choosing the Act 388 provisions.

L. CONFLICTS BETWEEN 2005 WISCONSIN ACTS 264 AND 388; WHERE ACT 264 PREVAILS

SECTION 102 of the bill repeals and recreates s. 55.135 (1), Stats., in order to delete superfluous language that remained in the statute when the two Acts were merged by the Revisor.

M. CONFLICTS BETWEEN 2005 WISCONSIN ACTS 387 AND 388; WHERE ACT 388 PREVAILS

SECTION 158 of the bill repeals and recreates s. 813.123 (3) (b), Stats., relating to a restraining order to protect an individual at risk of abuse, to incorporate the changes made by Act 388.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices. My telephone number is 266-9791.

LR:jb:ksm